


BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2000-207-W/S - ORDER NO. 2001-633

JULY 2, 2001



IN RE: Application of Carolina Water Service, Inc.)	ORDER DENYING
for Approval of an Increase in its Rates and)	PETITION TO
Charges for the Provision of Water and Sewer)	INTERVENE
Service.)	OUT OF TIME

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Petition to Intervene Out of Time (“Petition”) filed by Brenda W. Bryant (“Petitioner”). After consideration of the Petitioner’s request, the Petitioner’s Petition is denied.

On June 11, 2001, Petitioner filed with the Commission her Petition in the above referenced matter.¹ By her Petition, Petitioner requests permission to intervene in the above-referenced matter. Petitioner states that the late filing of her Petition is due to the death of her mother-in-law.

On June 18, 2001, counsel for Carolina Water Service, Inc. (“Applicant”) filed an “Answer to Petition to Intervene Out of Time” (“Answer to Petition”). By its Answer to the Petition, Applicant notes several defects with Petitioner’s Petition. First, Applicant

¹ In this matter, the Commission gives an unusually broad interpretation to the word “filed” as Petitioner’s Petition to Intervene Out of Time was found in the lobby of the Commission’s office building by the Commission’s Executive Director. Petitioner neither mailed the document to the Commission nor brought the document by during normal business hours. Rather, Petitioner informed the Commission’s Executive Director that she would be putting something inside the door of the Commission’s office building, and it appears that Petitioner merely slid the document under the door of the Commission’s office building.

notes that the Petition is undated and that no certificate of service or proof of filing accompanies the Petition.²

Second, Applicant states that Petitioner has failed to set forth any reason for failure to adhere to the deadline, or return date, established in the Notice of Filing in this case. Applicant asserts that the return date, by which Petitions to Intervene were to be filed, was May 4, 2001. The return date of May 4, 2001, was noticed to the public by publication of the Notice of Filing in *The State* newspaper on March 24, 2001. Also, the customers of the Applicant were provided direct notification of this matter by the mailing of the Notice of Filing by First Class regular mail service postmarked March 30, 2001. Applicant submits that Petitioner had ample notice of the return date of May 4, 2001 and yet seeks to intervene approximately 90 days³ after receipt of such notice and more than 30 days after the expiration of the return date. Applicant notes that Petitioner sets forth nothing in her Petition, such as a date related to the personal circumstance which appears to be the basis for the late filing of the Petition, which would permit the Commission to make a finding of good cause.

Third, Applicant observes that the Petition should not be construed as a request for a waiver of the Commission's rules and regulations. The Applicant notes that the Petition sets forth no request for a waiver of Commission rules under 26 S.C. Code Ann. Regs. 103-803 as there is no assertion of unusual hardship or difficulty set out in the

² In its Answer, the Applicant describes that it was "served" by someone leaving the Petition in the public lobby of the building where Applicant's counsel maintains its offices. Applicant states that the Petition was left in the lobby of the building sometime between the hours of 7:00 p.m. on June 8, 2001 (Friday) and 5:00 p.m. on June 10, 2001 (Sunday).

³ The number of days from the time notice was mailed to the customers until June 11 when the Petition was found in the offices of the Commission is approximately 72 days, not 90 as asserted by the Applicant.

Petition. Applicant further points out that because the Petitioner can only represent her own interests that the public interest is not affected by denial of the Petition.

Next, Applicant points out that the Petition does not comport with 26 S.C. Code Regs 103-836.A.3 in that the Petition states no grounds for intervention. While Petitioner states that she opposes the Application, Applicant asserts that Petitioner fails to state any grounds upon which her opposition can be given effect by the Commission.

Finally, Applicant asserts that Petitioner will not be prejudiced if her Petition is not accepted. Applicant notes that Petitioner's legal interests are represented by the Consumer Advocate for the State of South Carolina, who is a party to this matter. Further, Applicant observes that Petitioner may be heard at the "night hearing" scheduled for public comment in this matter.

At the Commission Meeting at which the Petitioner's Petition was being considered, Petitioner handed to the Commission's Executive Director, a purported Response to Applicant's Answer to Petition. Once again, Petitioner provides no documentation to show that her purported Response was served on the Applicant. By this document, Petitioner states that she was forced to file untimely due to the death of her mother-in-law and an out-of-state funeral. Petitioner appears to assert that the untimely filing of her Petition should not be a factor to disallow her intervention.⁴

Upon consideration of Petitioner's Petition, the Commission finds that the Petition should be denied. The Commission notes that Petitioner will have the

⁴ Petitioner states in her "Response" that " ... although I was forced to file untimely due to my mother-in-law's death and a[n] out of state funeral . This should not be a factor to disallow any facts or opinions that may have an important [i]mpact on what would effect the living standards of an entire area as the I-20 service area."

opportunity to present her testimony as a lay witness and to express her views at the night hearing scheduled in this matter and during the time set aside for public witnesses.

Petitioner has not indicated that she would be presenting any financial, engineering, or other substantive data for which party status should be afforded. In fact, the Petition indicates that Petitioner will be speaking as a customer of the Applicant. The scheduled night hearings are afforded for the purpose of receiving the testimony and comments of the customers of the Applicant. Further, the Commission recognizes that the Consumer Advocate will provide, as he has in other rate cases, expert testimony with regard to the application before the Commission. Lay witnesses, such as Petitioner, cannot provide the expert testimony that parties to the proceeding will provide to the Commission. Through the scheduled night hearing and the time set aside for public witnesses, Petitioner will have the opportunity to make her views known to the Commission.

Further, Petitioner has failed to present a sufficient reason for the granting of her Petition. While Petitioner has asserted that her Petition is untimely due to the death of a relative and attendance at an out-of-state funeral, Petitioner has not provided sufficient information upon which the Commission could determine that good cause has been demonstrated to allow the untimely intervention. The Commission is sympathetic to the Petitioner regarding her personal circumstances. However, sympathy does not equate to a showing of good cause to excuse the lateness of the Petition. The Petition was filed more than 30 days after the return date and more than 70 days after Applicant mailed the Notice of Filing to each customer. Petitioner provides no information for the Commission to determine whether such a delay was warranted.

JULY 2, 2001

PAGE 5

Accordingly, the Commission denies the Petitioner's Petition to Intervene Out of Time.

This Order shall remain in full force and effect until further Order of the Commission.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)